

PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
INTERNATIONAL BUSINESS MACHINES CORPORATION
MASTER PRICE AGREEMENT
94-00151

1.0 Scope: All governmental entities within the State of Montana including all state agencies, institutions of higher education and registered Cooperative Purchasing Organizations and are authorized to purchase IBM Thinkpads, AS/400, RS/6000 and related products under the terms and conditions of this price agreement.

2.0 Applicable Approved Purchasing Agreement: IBM ICA #HV53779

3.0 Changes:

3.1 Ordering/ Delivery Schedule

The State of Montana agrees to use the ordering process as detailed at
<http://www.state.nm.us/spd/wsca94151.html>

All ordered products are to be delivered within thirty (30) days from the date of receipt of an order. Failure to meet the thirty (30) day delivery schedule may result in cancellation of the order and/or this contract.

If the Contractor is unable to meet the maximum delivery schedule of thirty (30) days, the ordering agency must be notified and an alternate delivery schedule may be mutually agreed upon.

Agencies requesting an alternate, expedited delivery schedule must be contacted if the alternate schedule cannot be met. If an alternative delivery schedule cannot be negotiated, the State reserves the right to cancel the order.

All Shipments shall all be FOB destination.

3.2 Consideration/Payments

In consideration for the products and services to be provided, the ordering agency will pay within 30 days of receipt of a properly executed invoice. The Contractor will bill each agency directly for products and services provided.

The Department or ordering agencies may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract.

3.3 Warranties

IBM warrants that all equipment is free from defects in materials and workmanship and conforms to published specifications. Warranty period is a fixed period, commencing on its Date of Installation. During the warranty period, IBM agrees to provide repair and exchange service for the equipment, without charge, under the type of service designated for the machine.

If equipment does not function as warranted during the warranty period and IBM is unable to either repair to the satisfaction of the customer or replace it with equivalent equipment, it may be returned for a full refund.

IBM does not warrant uninterrupted or error-free operation of products or that all defects will be corrected. IBM will provide notification of items not covered. Non-IBM products and non-IBM services will be provided without warranty, unless specified otherwise.

3.4 Venue-replace section 25 in its entirety and replace with the following:

Individual purchases made by the State of Montana through this agreement are governed by the laws of Montana. The parties agree that any litigation concerning this contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Ref: 18-1-401, MCA)

3.5 Hold Harmless/Indemnification

The contractor agrees to indemnify the state, its officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense, resulting from bodily injury, death, or damage to real or tangible property to the extent caused by the contractor under the performance of this contract. The State agrees to promptly notify contractor of such claim and agrees to allow contractors to control, and cooperate with contractor in the defense and any related settlement negotiation.

4.0. Lease Agreements: Leasing provision have been approved for use by the State of Montana.

5.0 Primary Contact: The primary contact individual for this participating addendum is as follows:

Pete Aspinwall
100 North Park
Helena, Montana 59601
Telephone:406-444-5052
Fax: 406-444-5044

E-mail: paspinwa@us.ibm.com

- 6.0. Price Agreement Number: All purchase orders issued by procuring agencies within the jurisdiction of this participating addendum shall include the following price agreement number: 94-00151.

This Addendum and the Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

State of _____	Contractor: <u>IBM Corporation</u>
Entity Name: _____	_____
By: _____	By _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____